

# **Criminal Money Laundering Legislation in the 109<sup>th</sup> Congress**

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## Summary

Money laundering is an auxiliary federal crime, established to accentuate the seriousness of other specific federal, state, and foreign crimes (predicate offenses). It is designed to cut off the flow of money and other resources to and from those predicate offenses. Each of the racketeer influenced and corrupt organization (RICO) predicate offenses, including any of the federal crimes of terrorism, is automatically included on the money laundering predicate offense list. Money launderers face lengthy prison terms, heavy fines, and the confiscation of property associated with the laundering offense.

This is an identification of bills in the 109<sup>th</sup> Congress that amend the money laundering provisions of 18 U.S.C. 1956, 1957, or use those offenses as the predicates for other federal crimes, or add new offenses to the money laundering predicate offense list either directly or indirectly. Principal among these is P.L. 109-177 (H.R. 3199), the USA PATRIOT Improvement and Reauthorization Act.

Related reports include CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle and Todd Garvey, available in a shorter, abridged version as CRS Report RS22401, *Money Laundering: An Abridged Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

## Introduction

It is a federal crime to participate in a financial transaction or move money across a state border in order to (1) conceal the origin or ownership of the proceeds of other specific federal, state or foreign crimes (predicate offenses), (2) promote the commission of further predicate offenses, or (3) evade a state or federal reporting requirement, 18 U.S.C. 1956(a)(1),(2). Regardless of the purpose, it is also a federal crime to simply deposit or spend more than \$10,000 of the proceeds from a predicate offense, 1957(a).

Federal racketeer influenced and corrupt organization (RICO) provisions outlaw the acquisition or conduct of the affairs of an enterprise, whose activities affect interstate or foreign commerce, through the patterned commission of a series of racketeering activities (RICO predicate offenses), 18 U.S.C. 1961, 1962. RICO predicate offenses include state murder, robbery, kidnaping, arson, extortion, bribery, and drug trafficking felonies, 18 U.S.C. 1961(1)(A). They also include a host of federal crimes such as mail fraud, wire fraud, felonious drug dealing, and any felonious federal crime of terrorism, 18 U.S.C. 1961(1)(B), (G). Numbered among the money laundering predicate offenses are all the RICO predicate offenses (other than felony violations of 31 U.S.C. ch. 53-II, relating to monetary reporting requirements) and a substantial number of additional federal crimes such as theft of federal property, food stamp fraud, and cyber crime, 18 U.S.C. 1956(c)(7) (A), (D); 18 U.S.C. 1957(f)(3).

Money laundering in violation of section 1956 is punishable by imprisonment for not more than 20 years, 18 U.S.C. 1956(a) and/or a fine of not more than the greater of twice the amount involved in the offense or \$500,000 (or \$250,000 if the offender is an individual in certain undercover “sting” cases); violations of section 1957 are punishable by imprisonment for not more than 10 years, and/or a fine of the greater of the amount involved in the offense or \$250,000 (or \$500,000 for organizations), 18 U.S.C. 1957(b) (1). Property involved in a money laundering offense is subject to confiscation, 18 U.S.C. 981(a)(1)(A), 982(a)(1). The proceeds of any money laundering predicate offense are subject to confiscation, even no laundering offense ever occurs, 18 U.S.C. 981(a)(1)(C). The proceeds from a confiscation are generally divided among the law enforcement agencies that participate in the investigation and prosecution of the offense, 18 U.S.C. 981(e), 982(b)(1); 21 U.S.C. 881(e), 853(i).

Proposals to amend the federal criminal money laundering statutes usually fall into one or more of three categories. They amend the substantive or procedural features of the money laundering statutes. They add crimes to the list of money laundering predicate offenses, either directly or indirectly by adding them to the RICO predicate list or the list of federal crimes of terrorism. They recognize money laundering offenses as predicate offenses for other federal crimes.

**Patriot Act – P.L. 109-177 (H.R. 3199):** The USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177, contains several money laundering amendments. Some add to the money laundering predicate offense list, either directly or as a consequence of being added to the RICO predicate offense list or to the definition of federal crimes of terrorism and thus to the RICO predicate offense list.

Paragraph 112(a)(1) of P.L. 109-177 adds 18 U.S.C. 2339D (receipt of military training from a foreign terrorist organization) to the inventory of federal criminal offenses in 18 U.S.C. 2332b(g)(5)(B). This alone would be sufficient to add it to the RICO predicate offense list and thus to the money laundering predicate offense list, 18 U.S.C. 1961(1)(G), 1956(c)(7)(A). Subsection 409(1) confirms the assignment by expressly listing 18 U.S.C. 2339D as a money laundering predicate in section 1956(c)(7). The act reflects the view that laundering the proceeds of a section 2339D violation is more serious than the underlying violation itself, since section 2339D is a 10 year felony, 18 U.S.C. 2339D(a), while money laundering is a 20 year felony, 18

U.S.C. 1956(a). The paragraph makes proceeds of the offense no more forfeitable than they would otherwise be, since without reference to the money laundering or RICO provisions, as a federal crime of terrorism the proceeds of a section 2339D offense and any property used to facilitate such an offense would be made explicitly forfeitable by virtue of the bill's amendment to 18 U.S.C. 981(a)(1)(G) in section 120.

In section 122, the act outlaws narco-terrorism, drug dealing for the benefit of a terrorist organization, 21 U.S.C. 960A. The new crime carries a maximum sentence of imprisonment for life, *id.* Paragraph 112(a)(4) of the bill designates the new offense a federal crime of terrorism, 18 U.S.C. 2332b(g)(5)(B), thus making it among other things a RICO and money laundering predicate offense.

Subsection 403(a) inserts 18 U.S.C. 1960 (unlawful money transmission business) in the RICO predicate offense list and consequently in the money laundering predicate offense list. Section 1960 makes it a five year felony to engage in an unlicensed money transmission business, or to fail to comply with federal regulations governing a money transmission business, or to transmit funds derived from or intended to support criminal activity. Subsection 403(a) makes it a 20 year felony to launder the proceeds of section 1960 violation or to use a series section 1960 violations in the operation of an enterprise with an effect on interstate or foreign commerce, 18 U.S.C. 1956(a), 1963. Without recourse to the status of section 1960 offenses as a money laundering predicates, property involved in a section 1960 violation is already subject to confiscation, 18 U.S.C. 981(a)(1), 982(a)(1).

Subsection 409(1) expressly adds violations of 18 U.S.C. 2339C (financing terrorism) and 2339D (receipt of military training from foreign terrorist organizations) to the list of money laundering predicates in 18 U.S.C. 1956(c)(7). In doing so it confirms a standing they enjoy as federal crimes of terrorism. Any crime described in 18 U.S.C. 2332b(g)(5)(B) as a federal crime of terrorism is by virtue of that description a money laundering predicate offenses by way of inclusion in the RICO predicate list, 18 U.S.C. 1956(c)(7)(A), 1961(1)(G). Section 2339C is already described as a federal crime of terrorism in section 2332b(g)(5)(B); and paragraph 112(a)(1) of the act adds section 2339D to the federal crimes of terrorism list.

P.L. 109-177 makes several procedural adjustments in the basic money laundering statute as well. Subsection 403(c) of the act verifies the money laundering investigative authority which components of the Department of Homeland Security brought with them upon their transfer to the Department, 18 U.S.C. 1956(e), 1957(e). Section 405 of the act amends the basic money laundering statute to make it clear that its proscriptions cannot be evaded by a scheme featuring a series of laundering cycles. It adds to 18 U.S.C. 1956(a)(1) the statement that, "For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity [that is, of a predicate offense] if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity and all of which are part of a single plan or arrangement."

Paragraph 406(a)(2) works what the conference report describes as a technical correction in the language of 18 U.S.C. 1956, relating to the authority of federal courts to issue orders freezing certain assets and to appoint receivers over certain assets, H.Rept. 109-333 at 108. Paragraph 1956(b)(1) exposes those who violate section 1956 to civil penalties. Paragraph 1956(b)(2) asserts that for purposes of "adjudicating an action filed or enforcing a penalty ordered under this section," federal courts shall have jurisdiction over foreign individuals and institutions who have been served with process and with respect to whom one of three other basis for jurisdiction exists and "against whom the action is brought." Paragraph 1956(b)(3) prior to amendment declared that "[a] court described in paragraph (2)" may issue pre-trial restraining orders to ensure that property in the United States remains available to satisfy a possible judgment in favor of the

government. Paragraph 1956(b)(4) prior to amendment declared that “[a] court described in paragraph (2)” may appoint a federal receiver with authority to seize and control assets of a defendant in order “to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982,” or a restitution order.

Paragraph 406(a)(2) of the act provides that “[s]ection 1956(b)(3) and (4), of title 18, United States Code, are amended by striking ‘described in paragraph (2)’ each time it appears.”

Prior to paragraph 406(a)(2), the authority to issue pre-trial restraining orders and to appoint federal receivers appears to have been limited to courts with jurisdiction over overseas defendants. Paragraph 406(a)(2) appears to expand that authority to include cases in which there is no foreign defendant.

**Terrorism Offenses:** H.R. 3007 as introduced contained several provisions comparable to those of the USA PATRIOT Act reauthorization statute, P.L. 109-177. Subsection 3 of the bill would have made 18 U.S.C. 1960 (money transmitters) and 8 U.S.C. 1324a (unlawful employment of aliens) RICO predicate offenses, 18 U.S.C. 1961, and 18 U.S.C. 2339C (financing terrorism) a money laundering predicate offense directly, 18 U.S.C. 1956(c)(7)(D). Subsection 10(1) would have made 18 U.S.C. 2339D (receipt of military training from a foreign terrorist organization) a money laundering predicate offense, *id.* Subsection 3(c) would have confirmed the money laundering investigative jurisdiction of the Department of Homeland Security agencies, 18 U.S.C. 1956(e), 1957(e). Section 5 would have asserted the money laundering statutes’ coverage of dependent transactions, 18 U.S.C. 1956(j). Subsection 6(3) contained the same technical correction relating to asset freezes and federal receivers found in H.R. 3199.

Section 2 of S. 3882 would have outlawed material support to international terrorism (proposed 18 U.S.C. 2339E) and designated it a federal crime of terrorism under 18 U.S.C. 2332b(g)(5) making it a RICO predicate offense and consequently a money laundering predicate offense, 18 U.S.C. 1961(1)(G), 1956(c)(7)(A).

**Child Safety – P.L. 109-164 (H.R. 972):** Subsection 103(b) of P.L. 109-164 (H.R. 972), 119 Stat. 3563 (2006), enlarges the foreign money laundering predicate offense list to include “trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts,” in violation of foreign law that involves a financial transaction occurring at least in part in the United States, 18 U.S.C. 1956(c)(7)(B)(vii).

Subsection 103(c) makes 18 U.S.C. 1592 (destroying or seizing a passport or immigration document in aid of peonage) a RICO predicate offense. The offense, a five year felony, is subject to 10 and 20 year penalties if it serves as the basis for RICO or money laundering prosecution, 18 U.S.C. 1956(a), 1957(a), 1963(a). Even without the commission of the addition of conduct required for a money laundering or RICO prosecution, the proceeds of a section 1592 violation become subject to confiscation due to its status as a RICO and hence a money laundering predicate offense, 18 U.S.C. 981(a)(1)(C), 1956(c)(7)(A).

**Internet Crime:** Subsection 805(c) of H.R. 3132, as passed by the House, would have added 18 U.S.C. 2252A (child pornography) and 2252B (using misleading domain names on Internet obscenity or pornographic websites), to the RICO predicate offense list making them money laundering predicate offenses, 18 U.S.C. 1961(1), 1956(c)(7)(A). Subsection 5(c) of H.R. 3726 as introduced contained the same provision. Sections 9 and 10 of H.R. 5749 would have included 18 U.S.C. 1466A (obscene depiction of child abuse), 1960A (financing access to child pornography), 1960B (Internet facilitation of child pornography, 2252A (child pornography), and 2260A (registered sex offender crimes) in both the RICO and money laundering predicate offense lists. Section 8 of S. 3499 would have placed 18 U.S.C. 1466A, 1960A, 2252A on the RICO list thus

making it a money laundering predicate as well, and section 9 of the bill would have added 18 U.S.C. 1037 (spam) to the inventory of money laundering offenses.

**Street Gangs:** Section 101 of H.R. 1279, as passed by the House, would have made the money laundering provisions (18 U.S.C. 1956, 1957) criminal street gang predicate offenses, 18 U.S.C. 521(2)(D), and added 18 U.S.C. 521 (criminal street gangs) to the money laundering predicate offense list, 18 U.S.C. 1956(c)(7)(D). Section 108 of the bill would have expanded the inventory of RICO predicates to include 18 U.S.C. 1123 (interstate murder; a new crime created in section 107 of the bill) and crimes committed in Indian country (or any area within exclusive federal jurisdiction) that would have been RICO predicates (other than gambling) had they been committed within an area subject to state jurisdiction; in both instances inclusion as RICO predicates would have made the offenses money laundering predicates as well, 18 U.S.C. 1961(1), 18 U.S.C. 1956(c)(7)(A). Sections 801 and 808 of H.R. 4472 contained parallel provisions. H.R. 970, S. 155 and S. 4038 did not make 18 U.S.C. 521 a money laundering predicate, otherwise they too had parallel provisions (sections 301 and 304 in S. 4038; sections 102 and 105 in the other bills). Section 101 of H.R. 1322 would have added 18 U.S.C. 521 (criminal street gangs) to the money laundering predicate offense list.

Section 507 of S. 2368 would have made criminal street gang participation a grounds for immigration inadmissibility and deportation and listed money laundering offenses under 18 U.S.C. 1956 and 1957 as predicate gang offenses. S. 2377 (section 507), H.R. 6090 (section 201) and H.R. 6094 had similar provisions.

**Alien Smuggling:** Section 619 of H.R. 4437, as passed by the House, and section 230 of S. 2612 (and of S. 2611, as passed by the Senate) would have added 8 U.S.C. 1324(a)(bringing in and harboring certain aliens) to the money laundering predicate offenses list, and confirmed the presence of 18 U.S.C. 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor) on the list (section 1590 is already a money laundering predicate by virtue of its status as a RICO predicate), 18 U.S.C. 1956(c)(7)(D).

**Gun Trafficking:** Section 5 of S. 2629 would have added various illegal firearms trafficking offenses (18 U.S.C. 922(d), 924(g),(h),(n)) to the RICO, and thus to money laundering, predicate offense lists.

**Wartime Fraud:** Section 502 of S. 12 would have outlawed wartime profiteering and fraud (18 U.S.C. 1039) and made the new crime a money laundering predicate offense, 18 U.S.C. 1956(c)(7)(D). Section 705 of H.R. 4682, section 101 of S. 2361 and section 2(d) of S. 2356 contained similar provisions.

**Identity Theft:** 18 U.S.C. 1030(a)(2)(D)(authorized access to personally identifiable information) would have become a RICO predicate and consequently a money laundering predicate under section 102 of S. 1332, 18 U.S.C. 1961(1), 1956(c)(7)(A).

**Money Laundering Revision:** S. 2402 would have substantially revised existing federal money laundering laws. Among other amendments, it would have eliminated the list of individual predicate offenses that trigger the application of 18 U.S.C. 1956 and 1957 in favor of two classes of predicate offenses: (1) any state or federal felony and (2) any conduct occurring overseas that would have been a state or federal felony had it been committed within the United States, proposed 18 U.S.C. 1956(c)(7). Extraterritorial jurisdiction over an offense under section 1956 would have reached any offense having an effect in the United States and involving \$10,000 or more – in addition to the offenses involving (1) \$10,000 or more and (2) either Americans or conduct occurring in part in the United States that are now covered. It would have expanded the scope of section 1957 (depositing or spending \$10,000 or more of the proceeds of a predicate offense) to include such transactions in aid of a predicate offense. Violations of section 1957

would have become punishable by imprisonment for not more than the maximum term of the predicate offense (instead of the 10-year maximum now found in section 1957). And it would have further amended section 1957 to make it clear that its \$10,000 threshold could be reached by aggregating smaller amounts involved in related transactions.

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